

R 211013Z JUN 96
FM AMEMBASSY GABORONE
TO SECSTATE WASHDC 0735
INFO AMEMBASSY MASERU
AMEMBASSY MAPUTO
AMEMBASSY DAR ES SALAAM
AMEMBASSY HARARE
AMEMBASSY LUSAKA
AMEMBASSY LUANDA
AMEMBASSY PRETORIA
USMISSION USUN NEW YORK
AMEMBASSY WINDHOEK
AMEMBASSY PORT LOUIS
AMEMBASSY LILONGWE
AMEMBASSY MBABANE

UNCLAS SECTION 01 OF 04 GABORONE 002824

DEPARTMENT FOR U/S WIRTH

FOR PDAS BUSHNELL AND AF/S BLANEY

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E.O. 12958: N/A

TAGS: [SO CI](#) [KWMN](#) [SADC](#) [BC](#)

SUBJECT: STATUS OF WOMEN IN THE SADC REGION: BOTSWANA

REF: A) STATE 112270 B) 95 GABORONE 6846 C) 95 GABORONE
6794 D) 95 GABORONE 6246

¶1. SUMMARY: BOTH THE GOB AND THE BOTSWANA WOMEN'S NGO NETWORK ARE ACTIVELY DEMONSTRATING THEIR COMMITMENT TO THE IMPLEMENTATION OF THE BEIJING PLATFORM OF ACTION, BOTH AT THE NATIONAL AND THE SOUTHERN AFRICAN SUB-REGIONAL LEVELS. THE GOB IS SIMULTANEOUSLY MAKING PROGRESS ON SEVERAL FRONTS, INCLUDING ITS REVIEW OF POTENTIALLY DISCRIMINATORY LEGISLATION, CONSULTATIVE PROCEDURES ON THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), JOINT GOB-NGO WORKSHOPS TO SPREAD THE BEIJING PLATFORM OF ACTION TO BOTSWANA'S GRASSROOTS, AND OTHER IMPRESSIVE ACTIVITIES. WHILE BOTSWANA'S CUSTOMARY LEGAL TREATMENT OF WOMEN LEAVES SOMETHING TO BE DESIRED, ALL BATSOWANA CITIZENS CONTINUE TO USE BOTH MAGISTRATES' COURTS AND CUSTOMARY COURTS INTERCHANGEABLY. THE EMBASSY USED FY-95 116(E) FUNDS TO PROMOTE THE PRE-BEIJING PROCESS, AND IS POISED TO USE FY-96 116(E) FUNDS TO SUPPORT EFFORTS ALREADY UNDERWAY TO FURTHER THE BEIJING AGENDA, AS SOON AS THOSE FUNDS BECOME AVAILABLE. A KEY FOCUS OF THE SOUTHERN AFRICA REGIONAL DEMOCRACY FUND (SARDF) IS TO EMPOWER (SOUTHERN AFRICAN) WOMEN'S ORGANIZATIONS TO PARTICIPATE MORE FULLY IN THE DEMOCRATIC POLITICAL PROCESS, AND USAID/RCSA HAS ALREADY SIGNED A USD250,000 COOPERATIVE AGREEMENT WITH WOMEN IN LAW AND DEVELOPMENT IN SOUTHERN AFRICA (WILDAF) TO TRAIN SOUTHERN AFRICAN WOMEN PARLIAMENTARIANS. WHILE SADC'S EXECUTIVE SECRETARY HAS EXPRESSED HIS SUPPORT FOR THE CREATION OF A SADC DESK TO PROMOTE GENDER ISSUES, SUCH ISSUES WILL NOT LIKELY BE INCLUDED AS A SUBSTANTIVE AGENDA ITEM AT THE SADC SUMMIT IN MASERU THIS AUGUST. END SUMMARY.

GOB CONSULTANCY TO ADDRESS DISCRIMINATORY LEGISLATION

¶2. BOTSWANA LAWS GENERALLY REGARDED AS DISCRIMINATORY INCLUDE: THE MARRIAGE LAW, THE MAINTENANCE LAW, AND THE PROPERTY LAW. THE CURRENT MARRIAGE LAW, FOR EXAMPLE, DENIES WOMEN THE RIGHT TO SHARE EQUALLY IN THE ADMINISTRATION OF JOINT PROPERTY UNDER COMMON LAW MARRIAGE "IN COMMUNITY OF PROPERTY". UNDER THIS ARRANGEMENT, THE HUSBAND HAS THE POWER TO SOLELY ADMINISTER JOINT PROPERTY, AND CAN SELL, LEASE, OR DONATE JOINT PROPERTY WITHOUT HIS WIFE'S KNOWLEDGE OR CONSENT. A WOMAN MARRIED UNDER COMMON LAW MARRIAGE IN COMMUNITY OF PROPERTY CANNOT MAKE A LEGALLY BINDING

AGREEMENT WITHOUT HER HUSBAND'S EXPLICIT CONSENT.

13. AS INDICATED IN REF B, THE GOB HAS BEGUN THE PROCESS OF COMMISSIONING A CONSULTANCY TO REVIEW NATIONAL LEGISLATION REGARDED AS DISCRIMINATORY AGAINST WOMEN. DURING A RECENT MEETING WITH ACTING DHRF COORDINATOR, MS. VALENCIA MOGEHEH, THE GOB WOMEN'S AFFAIRS COORDINATOR, EXPRESSED HER OPTIMISM THAT ALL RECOMMENDATIONS TO AMEND THE DISCRIMINATORY LEGISLATION WOULD BE READY FOR CONSIDERATION BY THE ATTORNEY-GENERAL'S OFFICE BY LATE 1996 OR EARLY 1997. THE ATTORNEY-GENERAL'S OFFICE WILL THEN REVIEW THE SUBMITTED RECOMMENDATIONS, AND PROPOSE SPECIFIC LEGISLATIVE AMENDMENTS TO THE CABINET AND PARLIAMENT FOR APPROVAL. [NOTE: THE "RAPE LAW" WAS ORIGINALLY INCLUDED IN THE LIST OF LEGISLATION REGARDED AS DISCRIMINATORY AGAINST WOMEN TO BE ADDRESSED BY THE CONSULTANCY. IN RESPONSE TO POST-BEIJING PRESSURES TO AMEND DISCRIMINATORY LEGISLATION IN BOTSWANA, HOWEVER, PARLIAMENT HAS ALREADY AMENDED THE PENAL CODE TO REQUIRE THAT ALL RAPE CASES WILL BE TRIED IN CAMERA. END NOTE.]

LEGAL STATUS OF "CUSTOMARY LAW" REGARDING WOMEN

14. IN BOTSWANA, TWO LEGAL SYSTEMS CO-EXIST: THE FORMAL LEGAL SYSTEM (BASED ON ROMAN DUTCH LAW, OR THE COMMON LAW OF THE CAPE COLONY DURING THE COLONIAL PERIOD) AND THE CUSTOMARY LEGAL SYSTEM, EACH WITH ITS OWN SET OF RULES AND REMEDIES. WHILE BOTSWANA CITIZENS USE THE TWO SYSTEMS INTERCHANGEABLY, MOST ENCOUNTER THE LEGAL SYSTEM THROUGH THE CUSTOMARY COURTS, WHICH ARE MORE NUMEROUS AND THEREFORE VIEWED AS MORE ACCESSIBLE. THESE COURTS HANDLE MINOR OFFENSES INVOLVING LAND, MARITAL, AND PROPERTY DISPUTES, AND OPERATE UNDER THE AUTHORITY OF TRADITIONAL LEADERS.

15. TREATMENT OF CASES IN FORMAL VS. CUSTOMARY LEGAL SYSTEMS DIFFERS ACCORDING TO THE VALUES, EXPECTATIONS, AND PRACTICES UNDERLYING EACH SYSTEM. CHILD SUPPORT IS ONE EXAMPLE. IF A SINGLE PREGNANT WOMAN GOES TO A MAGISTRATE'S COURT, SHE WILL LIKELY BE AWARDED X PULA PER MONTH IN CHILD SUPPORT, TO BE PAID BY THE FATHER OF THE CHILD. IF THE SAME WOMAN GOES TO A CUSTOMARY COURT, HOWEVER, THE FATHER OF THE CHILD WOULD BE REQUIRED TO PAY "DAMAGES FOR SEDUCTION," BUT THE LONG-TERM WELFARE OF THE CHILD WOULD FALL TO THE WOMAN'S FAMILY.

16. OTHER ASPECTS OF CUSTOMARY LAW ARE POTENTIALLY DISCRIMINATORY AGAINST WOMEN, AND MAY REINFORCE VIOLENCE AGAINST WOMEN, A SERIOUS PROBLEM IN BOTSWANA. UNDER CUSTOMARY LAW AND IN COMMON RURAL PRACTICE, FOR EXAMPLE, MEN HAVE THE RIGHT TO "CHASTISE" THEIR WIVES, WHICH OFTEN TRANSLATES INTO PHYSICAL BEATINGS.

AREAS OF DIVERGENCE BETWEEN LAW AND PRACTICE

17. EXAMINING THE MOST IMPORTANT AREAS OF DIVERGENCE BETWEEN LAW AND PRACTICE REGARDING THE LEGAL STATUS OF WOMEN IN BOTSWANA MAY BE PREMATURE, AN EXERCISE MORE APPROPRIATELY CONDUCTED AFTER NON-DISCRIMINATORY LEGISLATION HAS BEEN APPROVED BY PARLIAMENT (SEE PARA 3). GENERALLY SPEAKING, HOWEVER, BOTSWANA'S LEGAL SYSTEM SUFFERS FROM SEVERE CAPACITY CONSTRAINTS WHICH LIMIT ACCESS TO SPEEDY JUDICIAL ACTION FOR ALL CITIZENS -- AND FROM A SHARP DIVERGENCE BASED ON AVAILABILITY OF COUNSEL TO THE RICH AND POOR -- A FAMILIAR FACTOR, BUT ONE THAT HAS MORE SEVERE CONSEQUENCES IN A SYSTEM WITHOUT THE SAFEGUARDS AND PUBLIC SERVICES AVAILABLE IN OUR OWN. THESE IMPERFECTIONS GENERALLY APPLY TO ALL BATSWANA ALIKE, REGARDLESS OF GENDER.

DEMONSTRATED COMMITMENT OF GOB TO BEIJING PLATFORM

18. THE GOB HAS PUBLICLY COMMITTED ITSELF TO IMPLEMENTING THE BEIJING PLATFORM FOR ACTION NATIONALLY, AS WELL AS TAKING A LEADING ROLE IN FACILITATING THE ACHIEVEMENT OF SOUTHERN AFRICAN POST-REGIONAL OBJECTIVES (SEE REFS B AND C). THE GOB'S POST-BEIJING ACTIVITIES ARE COORDINATED BY THE WOMEN'S AFFAIRS DIVISION IN THE MINISTRY OF LABOR AND HOME AFFAIRS, HEADED BY MINISTER B.K. TEMANE. TO DATE, THE GOB HAS DEMONSTRATED AN INTENTION TO CARRY THROUGH ON PROMISES MADE. SINCE SEPTEMBER 1995, FOR EXAMPLE, THE GOB HAS

- MET WITH THE WOMEN'S NGO COALITION TO DISCUSS AND AGREE ON THE BROAD OUTLINE OF BOTSWANA'S NATIONAL PLAN OF ACTION, REVISIT THE SIX PRIORITY AREAS AGREED UPON AT THE PRE-BEIJING NATIONAL WORKSHOP, AND DEVELOP PRACTICAL STRATEGIES BASED ON THESE PRIORITY AREAS;

- BEGUN CO-HOSTING WITH THE NGO COALITION SEVERAL LOCAL, DISTRICT-LEVEL, AND REGIONAL "FEEDBACK WORKSHOPS" THROUGHOUT BOTSWANA TO CARRY THE BEIJING PROGRAM FOR ACTION BACK TO THE GRASSROOTS LEVEL, INVOLVING WOMEN THROUGHOUT THE COUNTRY IN THE PROCESS OF DETERMINING HOW THE BEIJING PLATFORM SHOULD BE CARRIED OUT IN BOTSWANA;

- COMMISSIONED A CONSULTANCY TO REVIEW NATIONAL LEGISLATION GENERALLY REGARDED AS DISCRIMINATORY AGAINST WOMEN (SEE PARA 3);

- INITIATED AND COMPLETED CONSULTATIVE PROCEDURES ON THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) AND RELATED BOTSWANA LAWS;

- EXPEDITED CONSIDERATION OF BOTSWANA'S NATIONAL POLICY ON WOMEN IN DEVELOPMENT, FIRST DRAFTED BY THE GOB IN 1988 AND REVISED SEVERAL TIMES IN CONSULTATION WITH WOMEN'S NGOS;

- INVITED THE WOMEN'S NGO COALITION TO SUBMIT A SECTION ON WOMEN'S/GENDER ISSUES FOR INCLUSION IN BOTSWANA'S FORTHCOMING NATIONAL DEVELOPMENT PLAN (NDP-8, 1997-2001), THE BLUEPRINT FOR NATIONAL DEVELOPMENT DURING THE NEXT FIVE YEARS;

- CO-HOSTED (WITH THE WOMEN'S NGO COALITION) THE FIRST SOUTHERN AFRICA SUB-REGIONAL POST-BEIJING WORKSHOP, WHICH SUCCESSFULLY PRODUCED A SUB-REGIONAL PLAN FOR ACTION; AND

- AGREED (WITH THE WOMEN'S NGO COALITION) TO HOUSE THE POST-BEIJING SOUTHERN AFRICAN SUB-REGIONAL SECRETARIAT IN GABORONE.

DEMOCRACY AND HUMAN RIGHTS FUND

19. THIS EMBASSY IS ANXIOUS TO TAKE ADVANTAGE OF 116(E) MONIES TO SUPPORT THE IMPRESSIVE ACTIVITIES ALREADY INITIATED BY THE GOB AND THE WOMEN'S NGO COMMUNITY IN BOTSWANA. WE WERE PLEASED TO LEARN THAT THE HOLDS ON DHRF FUNDS HAVE BEEN LIFTED, AND LOOK FORWARD TO RECEIVING THE HUMAN RIGHTS FUND ADVICE OF ALLOWANCE SO THAT THE DHRF COORDINATOR CAN BEGIN OBLIGATING FUNDS. FIFTY-FIVE PERCENT OF OUR PROPOSED PROJECTS FOR FY-96 ARE GEARED TOWARD PROMOTING WOMEN'S CAPACITY-BUILDING ACTIVITIES OR COMBATTING RAPE AND SEXUAL ABUSE. PROJECTS INCLUDE, FOR EXAMPLE, THE SUPPORT OF POST-BEIJING "FEEDBACK" WORKSHOPS (SEE PARA 8), SCHOOL-BASED INVESTIGATIONS AND WORKSHOPS RELATED TO SEXUAL ABUSE, AND THE DEVELOPMENT OF A NATIONAL WOMEN'S POLITICAL CAUCUS.

SADC PLANS TO PROMOTE GENDER ISSUES

¶10. THE AMBASSADOR AND USAID/RCSA DIRECTOR MET WITH DR. KAIRE MBUENDE, SADC EXECUTIVE SECRETARY, ON JUNE 18. RESPONDING TO THE AMBASSADOR'S QUESTION OF WHETHER SADC PLANS TO DEVELOP A SPECIFIC MECHANISM TO PROMOTE THE SOUTHERN AFRICAN SUB-REGIONAL POST-BEIJING AGENDA, DR. MBUENDE RESPONDED THAT SADC WILL ESTABLISH A DESK TO PROMOTE GENDER ISSUES SUB-REGIONALLY. ACCORDING TO THE SADC SECRETARIAT'S INFORMATION OFFICER, HOWEVER, IT IS DOUBTFUL WHETHER GENDER ISSUES WILL BE A SUBSTANTIVE AGENDA ITEM AT THE AUGUST SADC SUMMIT IN MASERU.

¶11. NOTING THAT THE OBSTACLES TO GENDER EQUALITY WERE COMMON TO MOST COUNTRIES IN SOUTHERN AFRICA, THE AMBASSADOR RAISED THE IMPORTANCE OF A REGIONAL APPROACH TO GENDER ISSUES DURING HIS JUNE 20 FAREWELL CALL ON PRESIDENT MASIRE, THE CHAIRMAN OF SADC, AND SUGGESTED THAT THE SADC SECRETARIAT, WITH BOTSWANA ACTING AS A CATALYST, MIGHT BE ABLE TO PLAY AN IMPORTANT ROLE IN THIS AREA. MASIRE RECOGNIZED THE IMPORTANCE OF THE ISSUE AND DISCUSSED BOTSWANA'S APPROACH BUT DID NOT DIRECTLY RESPOND TO THE REGIONAL STRATEGY ISSUE.

SOUTHERN AFRICAN REGIONAL DEMOCRACY FUND (SARDF)

¶12. ONE OF THE THREE FOCUSES OF THE SARDF'S INTERIM STRATEGY -- TO "EMPOWER WOMEN'S ORGANIZATIONS TO PARTICIPATE MORE FULLY IN THE DEMOCRATIC POLITICAL PROCESS" -- AIMS DIRECTLY AT PROMOTING THE STATUS OF WOMEN IN THE REGION. THE SARDF'S FIRST AWARD WAS A USD250,000 COOPERATIVE AGREEMENT WITH WOMEN IN LAW AND DEVELOPMENT IN SOUTHERN AFRICA (WILDAF), A REGIONAL ORGANIZATION HEADQUARTERED IN ZIMBABWE, FOR TRAINING OF WOMEN PARLIAMENTARIANS. ASSISTING IN THE NETWORKING OF NGOS ORIENTED TOWARD WOMEN'S ISSUES IN THE REGION FITS SQUARELY WITHIN SARDF PRIORITIES, AND A PROPOSAL FROM NAMIBIAN NGO LEADERS OR THE GABORONE-BASED REGIONAL POST-BEIJING SECRETARIAT, FOR THAT MATTER, FOR SUCH REGIONAL COOPERATION WITH COUNTERPARTS IN OTHER SOUTHERN AFRICAN COUNTRIES WOULD BE WELCOME.

¶13. COMMENT: THIS EMBASSY IS CONTINUALLY IMPRESSED AT THE LEVEL AND APPARENT SINCERITY OF THE GOB'S COMMITMENT TO PROMOTING GENUINE REFORMS TOWARD EQUAL RECOGNITION OF WOMEN BOTH NATIONALLY AND AT THE SOUTHERN AFRICAN SUB-REGIONAL LEVEL. WE BELIEVE THAT THE REMARKABLE MEASURE OF COOPERATION BETWEEN THE GOB AND WOMEN'S NGOS, IN PARTICULAR, CAN SERVE AS A MODEL FOR OTHER SADC COUNTRIES. DAILY COMMUNICATION AND SUBSTANTIVE COLLABORATION BETWEEN GOVERNMENT AND NGO REPRESENTATIVES IS EXPEDITING THE IMPLEMENTATION OF MEANINGFUL CHANGE, AND IS VISIBLE BOTH AT THE NATIONAL AND THE GRASSROOTS LEVELS, WHERE JOINT GOB-NGO POST-BEIJING WORKSHOPS ARE BEING HELD THROUGHOUT THE COUNTRY TO POPULARIZE THE BEIJING PLATFORM AND DEMOCRATIZE THE PROCESS OF TRANSLATING THAT PLATFORM TO BOTSWANA'S UNIQUE CIRCUMSTANCES. BOTSWANA HAS COME A LONG WAY ON GENDER ISSUES IN A VERY SHORT TIME.

¶14. COMMENT CONTINUED: WHILE SADC CONTINUES TO PAY LIP SERVICE TO THE IMPORTANCE OF PROMOTING GENDER ISSUES AT THE SUB-REGIONAL LEVEL, THE TRANSLATION OF PLEDGES INTO ACTION MAY REQUIRE CONTINUED PRESSURE ON THE PART OF THIS EMBASSY, OTHER DONORS, AND THE SUB-REGIONAL POST-BEIJING BODY THAT EMERGED FROM THE NOVEMBER 1995 WORKSHOP HERE IN GABORONE (SEE REF C). SADC'S RESOURCES OFTEN DO NOT MEASURE UP TO ITS COMMITMENTS, AND THE GENDER ISSUES AREA IS NO EXCEPTION. BUILDING SADC'S CAPACITY TO DEAL EFFECTIVELY WITH WOMEN'S ISSUES IS AN AREA WHERE THE U.S. MIGHT PLAY A ROLE.

JETER